

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellant,

v

CARON KENNY JACKSON,

Defendant-Appellee.

UNPUBLISHED

June 12, 2007

No. 269779

Wayne Circuit Court

LC No. 06-000999-01

Before: Davis, P.J., and Hoekstra and Donofrio, JJ.

PER CURIAM.

Defendant was charged with carrying a concealed weapon in a motor vehicle, MCL 750.227(2), and possession of marijuana, MCL 333.7403(2)(d). Following the preliminary examination, the magistrate allowed the prosecutor to amend the possession charge to possession with intent to deliver, MCL 333.7401(2)(d), and to add a charge of possession of a firearm during the commission of a felony, MCL 750.227b(1). Defendant moved to quash the charge of possession with intent to deliver and to suppress both the gun and the marijuana. The trial court granted defendant's motion. The prosecutor appeals as of right, challenging the trial court's ruling relating to suppression of the evidence only. Because under the facts presented in this case reasonable suspicion was not required for police to approach defendant, and because defendant was unable to produce his driver's license while operating a vehicle, he committed a misdemeanor in the officers' presence and could be arrested without a warrant, we reverse and remand. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Two officers were working crowd control in an area where two bars were closing for the night. A woman approached them and reported that a man dressed in black standing by a white van on the corner had a gun. The officers went to investigate and saw defendant, who was dressed in black, getting into the driver's seat of a white van, the engine of which was running. They approached the van and one officer asked to see defendant's driver's license. He admitted that he did not have one and he was immediately arrested. A search of his person produced the marijuana. As the other officer removed the passenger from the van, he saw a gun protruding from beneath the driver's seat. The trial court ruled that the officers lacked reasonable suspicion to stop defendant and suppressed the evidence.

The trial court's ultimate ruling on a motion to suppress is reviewed de novo. *People v Garvin*, 235 Mich App 90, 96; 597 NW2d 194 (1999). The application of the exclusionary rule

is a question of law that is also reviewed de novo. *People v Custer*, 465 Mich 319, 326; 630 NW2d 870 (2001).

There are three categories of encounters between police officers and citizens. The first is an arrest, which requires probable cause to believe that the person detained has committed or is committing a crime. The second is an investigatory stop, which is limited to brief, nonintrusive detention and which requires specific and articulable facts sufficient to give rise to a reasonable suspicion that the person detained has committed or is committing a crime. The third involves no restraint on the person's liberty and is characterized by an officer seeking the person's voluntary cooperation through noncoercive questioning. The first and second categories are Fourth Amendment seizures while the third category is not. *People v Bloxson*, 205 Mich App 236, 241; 517 NW2d 563 (1994).

This case was presented to the trial court as one involving the second type of police-citizen encounter. The trial court determined that reasonable suspicion was lacking. Assuming without deciding that the information provided by the woman was insufficient to justify an investigatory detention and search for the weapon, see *People v Took*s, 403 Mich 568, 579-582; 271 NW2d 503 (1978), that alone does not warrant suppression because the police did not detain defendant and question him about a gun or search him for a gun on the basis of the woman's complaint. Rather, they approached defendant, who was seated in a van but had not yet attempted to leave the area, and asked for his identification. Thus, the encounter did not arise to the level of an investigatory stop.

The crux of the prosecutor's appeal is that the incident actually involved the third type of police-citizen encounter and thus the trial court erred in determining that the police required reasonable suspicion to approach defendant.

"When an officer approaches a person and seeks voluntary cooperation through noncoercive questioning, there is no restraint on that person's liberty, and the person is not seized." *People v Jenkins*, 472 Mich 26, 33; 691 NW2d 759 (2005). The officer can also ask for the person's identification without implicating the Fourth Amendment. *Id.* A police approach for questioning on the street does not amount to an investigatory stop "unless there exist intimidating circumstances leading the person to reasonably believe he was not free to leave or the person rebuffs the police officer by refusing to answer and walking away." *People v Daniels*, 160 Mich App 614, 619; 408 NW2d 398 (1987). The Fourth Amendment is implicated when the officer interferes with the person's attempt to leave, at which time the officer must have reasonable suspicion to make an investigatory stop. *Jenkins*, *supra* at 34.

Because the officers simply approached defendant's vehicle and asked for defendant's driver's license and there is nothing in the record to suggest that the circumstances involving the officers' approach of the vehicle was intimidating or threatening or that defendant was trying to leave, defendant was not seized and thus the officers did not require reasonable suspicion. While defendant could have refused to cooperate, he did not and instead admitted that he did not have a driver's license.

A licensed driver must have his driver's license in his immediate possession "at all times when operating a motor vehicle, and shall display the same upon demand of any police officer" who identifies himself as such. MCL 257.311. Operating a vehicle "means being in actual

physical control of a vehicle regardless of whether the person is licensed” to drive. MCL 257.35a. Control over a vehicle is the power or authority to guide or manage the vehicle. *People v Yamat*, 475 Mich 49, 53-54; 714 NW2d 335 (2006). A conscious person in the driver’s seat of a vehicle that is not in motion but has its engine running may be considered to have such physical control of the vehicle as to support a conclusion that he was operating the vehicle. *People v Pomeroy (On Rehearing)*, 419 Mich 441, 444, 447; 355 NW2d 98 (1984), overruled in part on other grounds by *People v Wood*, 450 Mich 399, 405; 538 NW2d 351 (1995). Because defendant was unable to produce his driver’s license while operating the vehicle, he committed a misdemeanor in the officers’ presence and could be arrested without a warrant. MCL 257.901; MCL 764.15(1)(a). Because the seizure of defendant was constitutionally valid, the exclusionary rule does not require suppression. *People v Lyon*, 227 Mich App 599, 611; 577 NW2d 124 (1998).

We reverse the trial court’s order suppressing the evidence and remand for reinstatement of the charges of carrying a concealed weapon and possession of marijuana. We do not retain jurisdiction.

/s/ Alton T. Davis
/s/ Joel P. Hoekstra
/s/ Pat M. Donofrio